

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FREDERICK WING

Claimant

VS.

EATON CORPORATION

Respondent

Self-Insured

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Docket No. 219,396

ORDER

Claimant appeals from the preliminary hearing Order of May 5, 1997, wherein Administrative Law Judge Bruce E. Moore denied claimant benefits finding claimant had failed to carry his burden of proving personal injury by accident arising out of and in the course of his employment with respondent.

ISSUES

Whether claimant suffered an aggravation to his right knee, foot, and ankle arising out of and in the course of his employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant began working for respondent February 19, 1973, as a machine operator. His job required that he be on his feet regularly, with a typical work schedule running between 60 and 64 hours per week. Claimant worked on three separate machines, making the rounds between these machines. Claimant has been having discomfort and pain in his right leg and foot for approximately ten years. Respondent contends that claimant's physical difficulties with his right lower extremity are the result of day to day activities of standing and walking. Claimant has been diagnosed with arthritis and arthrosis, both of

which are degenerative conditions which progress over time. The medical dispute in this matter involves the opinions of C. Reiff Brown, M.D., the independent medical examiner hired by claimant, and Kenneth A. Jansson, M.D., the independent medical examiner appointed by the Court. Dr. Brown found that the work claimant had been doing over a period of 24 years with the respondent had caused and continues to aggravate the degenerative conditions in claimant's knee and foot. Dr. Jansson, after examining claimant, found that arthritis is a multifactorial disease with hereditary components, immunologic components, traumatic components, can be related to body weight and activities, the type of house you live in, the distance you walk, and involves several other factors. For this reason Dr. Jansson was unable to say that it was the job in and of itself that caused claimant to have arthritis. Dr. Jansson did say that there had been some exacerbation of the arthritis by claimant's day to day work activities but no more than there would be from any other similar job.

In order for claimant to collect workers compensation benefits under the Workers Compensation Act he must suffer an injury arising out of and in the course of his employment. The phrases "out of" and "in the course of" employment are separate and distinct and must each be proven before benefits can be awarded. The phrase "out of employment" points to cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of employment" when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of employment" if it arises out of the nature, conditions, obligations, and incidents of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase "in the course of employment" relates to the time, place, and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. Hormann v. New Hampshire Ins. Co., 236 Kan. 190, 689 P.2d 837 (1984).

In this case, the medical evidence is somewhat contradictory. Dr. Brown states that claimant's work over the years caused and continues to aggravate claimant's condition. Dr. Jansson on the other hand, while refusing to pinpoint the job as a causation factor, did agree that some exacerbation of claimant's arthritis occurred from work. This, coupled with claimant's testimony that the ongoing physical activities at work continued to aggravate his problem over many years, leads the Appeals Board to the conclusion that claimant's current condition is the result of an accidental injury arising out of and in the course of his employment with respondent. As such, the Order of Administrative Law Judge Bruce E. Moore denying claimant benefits should be reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated May 5, 1997, should be, and is hereby, reversed and remanded for additional findings pursuant to this Order.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: Scott J. Mann, Hutchinson, KS
Edward D. Heath, Jr., Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director